REMARKS

Reconsideration of this application and entry of this Amendment after final is respectfully requested. Claims 1-16 are pending in this application.

1. Status of the Claims

Claims 1-16 are pending in this application. Minor amendments have been made to the claims without affecting the scope of the claims or adding new issues. Claims 1, 2, 7, 9, 11, and 15 have been amended to correct informalities, including but not limited to those noted by the Examiner in paragraph 5 of the April 14, 2004 Office Action. Additionally, claim 12 was amended to clarify that the combining of ingredients for the product and the liquid binder is performed at the elevated temperature, as is also required in claims 1 and 9. Further, claims 4, 5, 9, 12, have been amended to clarify that the "solid content" may also be referred to as the "sugar concentration" of the binder solution. Support for the amendments to claims 4, 5, 9, and 12 are disclosed on, for example, at page 4, lines 4-16 of the application as originally filed.

2. Prior Art Rejections

a. Cook does not teach or suggest mixing ingredients for a granola or snack-food product with a liquid binder at an elevated temperature.

Claims 1, 8, 12, and 16 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 4,451,488 to Cook et al. (Cook). The Examiner contends that Cook discloses a process for preparing a granola food bar including mixing granola with a liquid binder at an elevated temperature (125 – 135° F), forming and pressing the mixture into a food bar, and cooling at room temperature. Applicant respectfully traverses the rejections of claims 1, 8, 12, and 16.

Cook does not teach or suggest mixing both ingredients for a granola or snack food product with a liquid binder at an elevated temperature. In contrast, Cook discloses in col. 4, lines 6-15 that dry ingredients, such as granola mix, dried fruit, crisp rice, and peanuts are blended separately from the binder ingredients.

Additionally, in Cook, only the binder ingredients are disclosed as being mixed at an elevated temperature. In particular, the binder ingredients of Cook, sugars, glycerin, sorbitol, and corn syrup, are disclosed as being "mixed separately" with salt and an antioxidant and heated to 125 – 135° F. Thereafter, the binder mixture is added to the pre-mixed dry ingredients and blended. Cook, col. 4, lines 1-20. Thus, Cook teaches away from the present invention by separately blending the dry ingredients and binder ingredients, and further only blending only the binder ingredients at an elevated temperature. Teaching away is a *per se* demonstration of a lack of prima facie obviousness. *In re Dow Chemical.*, 837 F.2d 469 (Fed. Cir. 1988). In view of the above, claims 1, 9, and 12 (as amended), and all claims dependent thereon, are not obvious over Cook because Cook does not disclose mixing ingredients for a granola or snack food product with liquid binder at an elevated temperature as required in the claimed invention.

The differences between the present invention as claimed and Cook are significant and are not obvious in view of Cook as are the advantages provided by the present invention. The claimed invention specifically discloses that by mixing the binder and snack-food product ingredients at substantially the same temperature during mixing, the liquid binder remains a liquid during the mixing and enables product precursor to be more easily formed when cooled. *See* Specification page 3, lines 1-9. Cook has no teaching or suggestion whatsoever that mixing the dry base ingredients and binder ingredients at the same temperature would result in superior product formation.

Additionally, the claimed method reduces waste by enabling food fragments collected at any stage of the method to be returned to the starting materials such that no food materials are wasted. In particular, as discussed on page 1, lines 20-24 of the Specification, the claimed invention is an advance over the prior art because known methods of making granola or snack products require the step of breaking or cutting a sheet a dried, adhered components into desired sizes. Such cutting or breaking results in small pieces of the product, such as nuts, fruit or other ingredients, to break off before packaging of the product. A sieving step is thus

required to remove the small bits from the finished product and such small bits are normally discarded as waste.

Instead of discarding such fragments, the claimed invention allows these normally discarded fragments to be optionally passed back to the starting materials. Since the binder materials and granola or snack-food ingredients in the claimed invention are mixed together at an elevated temperature, the returned fragments (ingredients in a solidified binder) can be returned to their initial state (ingredients and a liquid binder) due to the heat. The returned materials are again in the same form as the standard starting materials for the claimed method. *See* Specification page 6, lines 13-27. Therefore, the present invention enables granola or snack food product to be reversibly formed and broken down into its components as desired. Cook has no disclosure whatsoever which would suggest enable such a reduction of waste fragments because Cook only discloses mixing the binder ingredients and dry base ingredients separately, and only heating the binder ingredients.

b. Neither Cook nor LaBaw, alone or in combination, teach or suggest a binder composition having the claimed sugar concentrations

Further, the Examiner rejected claims 2-7, 9-11, and 13-15 under 35 U.S.C. 103(a) as being unpatentable over Cook in view of U.S. Patent no. 4,784,867 to LaBaw et al. (LaBaw). Claims 4, 5, 9, and 15 have been amended to clarify that the sugar concentration of the binder solution is at least about 94% (claim 4); up to about 99% (claim 5); and about 98% (claims 9 and 12). Accordingly, claims 4, 5, 9, and 15 are patentable over Cook in view of LaBaw et al. because neither Cook or LaBaw alone or in combination teach or suggest a binder composition having greater than a sugar concentration of about 94% by weight. LaBaw teaches a binder composition which comprises about 5-10% by weight of water, about 15-30% by weight of fat; and a mixture of sucrose and partially caramelized non-crystallizing sugar in a weight ratio of about 1:0.8-3. *See* LaBaw (abstract) and col. 4, lines 17-34. As such, the highest solid sugar concentration disclosed by LaBaw is theoretically 80%, which is well below that required in claims 4, 5, 9, and 15.

Moreover, Cook teaches a binder solution wherein "the sugar content is relatively low..." *See* Cook, col. 2, lines 43-44. Instead of using the high sugar concentration binder disclosed in the present invention as claimed, Cook teaches the use of polyhydric alcohols in a binder system which also includes salt, shortening, flavoring, and antioxidants. Cook, lines 36-43. Cook has no teaching or suggestion whatsoever of a binder system that has at least about a 94% sugar concentration by weight as the present invention as claimed. In view, of the above, claims 4, 5, 9 and all claims dependent thereon, and claim 15 are patentable over Cook and LaBaw because the references, alone or in combination, do not teach or suggest a binder composition having a sugar concentration greater than about 94%.

CONCLUSION

Claims 1-16 are in condition for allowance and an early indication of allowance is solicited.

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